Equality And Cultural Security For Canada's Francophone Minority

By Peter G. White,1996

Despite often justified discontent in Western Canada, the only serious risk of Canada's disintegration still lies in the relationship between Francophones and non-Francophones, and particularly between the Francophone government and the Francophone people of Quebec on the one hand, and the other governments and non-Francophone people in Canada on the other.

This relationship has been at the heart of Canadian identity and unity since 1760, the year of Montreal's surrender to British General James Murray, successor to General James Wolfe. It is not, and never has been, a static relationship. It is a relationship that has constantly evolved in response to circumstances, specifically demographic, geographic, political, and legal changes. Because this is a dynamic relationship, it cannot be viewed as a "problem" that can ever be "solved" once and for all, but rather as a complex set of interwoven interactions that must be constantly managed on both sides of the linguistic border.

Francophones as a Minority in Canada

Since the late 1700s, French Canadians, who were originally virtually the only Europeans in the entire territory that would become Canada, have been numerically inferior to other non-Indigenous Canadians. French Canadians, who had constituted the European majority in Canada for the two centuries following the founding of Quebec City in 1608, became a European minority in Canada by the end of the 18th century, as the number of non-Francophone immigrants finally surpassed them.

The fundamental fact that French Canadians have been in a permanent minority position in Canada for two hundred years has shaped their attitudes ever since. All French-speaking Canadians are acutely aware of belonging to a linguistic minority in Canada and of being potentially (and often actually) at the mercy of the non-French-speaking majority in all areas where the main interests of the two groups are likely to diverge.

In a democracy, members of identifiable minority groups quickly learn that they are constantly at risk of being singled out by the democratic majority or perhaps even discriminated against by it, either deliberately or inadvertently. They quickly identify the factors that could become grounds for discrimination. And if they cannot change these factors, or if they are too essential to their identity for them to accept changing them, they soon become hypersensitive to any discriminatory treatment based on these distinctive characteristics; it is not uncommon to see them advocate for, or even fight against, any form of discrimination that affects them. At the same time, majorities instinctively tend to feel mistrust and resentment toward minorities who refuse to assimilate, who insist on maintaining, even celebrating, their essential differences, and who form a united front to protect and defend these differences—although such minority

cohesion is the natural and often necessary reaction to discriminatory attitudes on the part of the majority.

With regard to French Canadians, the areas most likely to generate discrimination from the majority were initially primarily religious, then religious and linguistic, and are now linguistic and cultural. French Canadians considered the Roman Catholic religion an essential element of their identity, and they refused to abandon it even when it caused considerable injustice and discrimination from the non-Catholic majority. Today, most Francophones see their language as a key, non-negotiable element of their identity, even though it is (and perhaps because of this) the main cause of potential discrimination from the non-Francophone majority. Francophones in Canada are therefore generally combative when it comes to protecting their identity and linguistic rights, and they are prepared to go to great lengths to demand recognition and respect for this identity and these rights by the non-Francophone majority.

This is why the only serious threat to Canada's survival is indeed the relationship not only between Francophones and non-Francophones, but between the Francophone minority and the non-Francophone majority in Canada, in the countless manifestations of this relationship, whether political, economic, legal, or, above all, psychological.

Almost all easily identifiable minorities have a profound sense of vulnerability and insecurity, which can easily, rightly or wrongly, morph into a feeling of injustice, persecution and victimization. They can thus become prime targets for disinformation and demagoguery, which fuel the predisposition to believe that many of their problems stem from discrimination by a hostile or indifferent majority. Only a very strong sense of being protected from discrimination or mistreatment by the majority can create an effective bulwark against demagogues exploiting the normal insecurity to which minorities are subject. Without this sense of both security and equality of their cultural rights within the state, **a cultural minority faced with the realistic option of becoming a cultural majority by founding its own independent state will always risk succumbing to the temptation to separate from a country in which it seems destined to remain a perpetual minority.**

Aboriginal peoples and Francophones, the two national minorities of Canada

However, French-speaking Canadians are not simply another ordinary minority in Canada. Along with Canada's Indigenous peoples, French-speaking Canadians constitute one of Canada's two national minorities. What do we mean by "national minorities"?

The best answer to this question is the following lengthy excerpt from the book *Multicultural Citizenship - A Liberal Theory of Minority Rights,* published by the brilliant young Canadian political theorist Will Kymlicka at Clarendon Press, Oxford, in 1995.

Kymlicka[1] identifies two main sources of cultural diversity in a country: national minorities and immigration. National minorities arise, he explains (p. 10) *"From the incorporation of cultures that previously had autonomous governments and were territorially concentrated. It is common to observe in these incorporated cultures a manifest desire to survive as distinct societies alongside the majority culture, as well as a demand for various forms of autonomy or self-government that guarantee their survival as distinct societies."*

An ethnic group, on the other hand, "comes into being as a result of individual and family immigration." This type of immigrant often forms loosely organized associations [...] Their stated desire is to integrate into society as a whole and to be accepted as full members. Although they sometimes call for greater recognition of their ethnic identity, they do not seek secession or autonomy. Rather, their goal is to modify the institutions and laws of the existing society so that they take greater account of cultural differences.

Of course, these are general trends, not laws of nature [...] But we cannot understand or evaluate the policies of multiculturalism without recognizing the extent to which the historical incorporation of minority groups has shaped their institutions, their identity, and their collective aspirations.

And Kymlicka explains (p. 11): there is a national minority wherever we observe *"in a given State the coexistence of several nations, where the term 'nation' means a more or less complete historical community from the point of view of institutions, which occupies a given territory or homeland and which has a distinct language and culture.[2] In this sociological sense, the notion of 'nation' is closely linked to that of 'people' or 'culture' - and, in fact, these concepts are often defined by each other. Therefore, a country where more than one nation lives is not a nation-state but a multinational state, and smaller cultures form "national minorities." The incorporation of different nations into a single state can be involuntary, as occurs when one cultural community is invaded and then conquered by another, or ceded by one imperial power to another, or when its national territory is invaded by settlers. But a multinational state can be deliberately formed when different cultures agree to form a federation in order to acquire mutual advantages. [...]*

Canada's historical development involved the federation of three distinct national groups (the English, the French, and the Aboriginal peoples). Initially, the incorporation of the Quebec and Aboriginal communities into the Canadian political community was involuntary. Indigenous territories were invaded by French settlers, who were in turn conquered by the English. Although the possibility of secession is quite real in the case of Quebec, ***the historical preference of these groups—as was the case for national minorities in the United States—has not been to leave the federation but rather to renegotiate its terms in order to increase their autonomy.***

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[11] Kymlicka is careful to point out that the national groups he discusses are not based on blood (p. 22): It is important to emphasize that national groups, in the sense I use the term, are not defined by race or ancestry.

[2] Some definitions of the term "nation" include the notion of a shared desire to live together, (in French, "un vouloir-vivre commun").

Many turning points in Canadian history have coincided with these attempts to renegotiate the terms of the federation between English, French, and Indigenous peoples. [...] The most recent attempt ended in failure in October 1992, when a proposed constitutional amendment (the Charlottetown Accord) was defeated in a national referendum. This Accord would have enshrined an "inherent right to self-government" for Indigenous peoples and would have granted Quebec special status as "the only predominantly French-language and French-speaking society in Canada and North America."

Many other Western democracies are also multinational states, either because they forcibly incorporated indigenous populations (e.g., Finland, New Zealand) or because they were formed through the more or less deliberate federation of at least two European cultures (e.g., Belgium and Switzerland). In fact, many countries around the world are multinational states, in the sense that their borders delineate a territory previously occupied by cultural entities that often had their own governments. This is the case for most countries of the former communist bloc and the Third World.

To say that these countries are multinational states is not to deny the fact that their citizens consider themselves as one people for certain purposes.

For example, the Swiss have a strong sense of loyalty, despite their cultural and linguistic divisions. Indeed, multinational states cannot survive unless the various national groups demonstrate their allegiance to the larger political community in which they are embedded.

Some commentators see this shared loyalty as a form of national identity, and therefore consider Switzerland a nation-state. It seems to me that this conception is mistaken. It is important to distinguish the notion of "patriotism," a feeling of allegiance to a state, from that of "national identity," a sense of belonging to a national group. In Switzerland, as in most multinational states, national groups feel a sense of allegiance to the country for one single reason: the country recognizes and respects their distinct national existence.

The Swiss are patriotic, but the Switzerland to which they are loyal is defined as a federation of distinct peoples. For this reason, it is more appropriate to describe it as a multinational state and to see in the feelings of common loyalty it inspires a reflection of shared patriotism, and not of a common national identity.

This is evident in the case of the majority English-speaking society in Canada and the United States. Both countries have experienced high rates of immigration for over a century, initially from Northern Europe, and now primarily from Asia and Africa. Consequently, Americans or Canadians of pure Anglo-Saxon descent form an increasingly small minority.

But this is also true of national minorities. Immigration levels in French Canada were low for a long time, but they have now caught up with those of English Canada or the United States, and Quebec is actively seeking Francophone immigrants from West Africa or the Caribbean. On the

other hand, there has been a high rate of intermarriage between the Indigenous peoples of North America and the English, French, and Spanish populations. Consequently, a mixture of races and ethnicities is observed in all these national groups. The number of French Canadians of sole Gallic descent, or of Indigenous peoples of sole Indian (aboriginal) descent, is also increasingly limited and will soon become a minority.

Therefore, what I mean by national minorities is not groups of common race or ancestry, but cultural groups. (For this reason, it would be more accurate to speak of Anglophone and Francophone Canada, rather than English and French Canada, because these terms wrongly imply that these groups are defined by ethnic descent rather than by integration into an ethnic community. I would point out that originally, the French-Canadian conception of their nation was indeed based on the notion of descent. And a substantial minority of Quebecers still hold a conviction that closely resembles this. A 1985 study found that approximately 40% of respondents believed that the longer an individual's ancestors had been in Quebec, the more "Québécois" that individual was, and 20% were of the opinion that immigrants could not call themselves Quebecers. It follows that the evolution of Quebec identity, from descent to participation in a Francophone society, is incomplete [...] However, all the major political parties in Quebec, including the Parti Québécois, despite their nationalism, explicitly reject this notion of national belonging based on descent.

Concepts of national belonging based on descent are clearly tainted by racism and manifestly unjust. This is a good test for evaluating a liberal conception of minority rights insofar as it defines belonging to a nation in terms of integration into a cultural community rather than descent. National belonging should be possible, in principle, for any person, regardless of race or of color, desires to learn the language and history of the nation and to participate in its social and political institutions.

Some argue that a truly liberal conception of national belonging should be based solely on political principles of democracy and rights rather than on integration into a political culture.

This non-cultural conception of national belonging is often perceived as what differentiates the "civic" or "constitutional" nationalism of the United States from anti-liberal "ethnic" nationalism. But [...] this is a mistake. In the United States, immigrants must not only pledge allegiance to democratic principles but also learn the language and history of the society that receives them. What distinguishes "civic" nations from "ethnic" nations is not the absence of any cultural component to national identity, but rather the fact that anyone can integrate into the common culture, regardless of race or color. [...]

This misunderstanding can be attributed to a flawed reading of American history. At the time of the Revolution, an overwhelming majority of Americans shared the same language, literature, and religion as the English, the very nation against which they had just rebelled. In an effort to strengthen their sense of a distinct nation, Americans emphasized certain democratic principles—liberty, equality, democracy—principles that had justified their rebellion. Some conclude from this that American nationalism is ideological rather than cultural [...]. But this is a

mistake. Americans, like the English, conceived of national belonging in terms of participation in a shared culture. Of course, their emphasis on political principles affected the nature of this shared culture, and this is what gave American national identity a distinctive ideological character not found in England or other societies colonized by the English. Ideology has shaped, but not replaced, the cultural component of national identity. A purely non-cultural definition of civic nationalism is implausible and often leads to self-contradiction. One might refer, for example, to Habermas's concept of "constitutional patriotism," which presupposes both that citizenship should be independent of particular ethno-cultural or historical characteristics, such as language, and that a common language is indispensable to democracy [...].

Kymlicka goes on to describe national minorities in greater detail and provides numerous examples from around the world, including the United States. He clearly demonstrates that it is a myth to believe that national minorities do not exist in the United States; and that it is equally illusory to think that all Americans are treated with absolute fairness (p. 11): *Many Western democracies are multinational states. For example, there are numerous national minorities in the United States, including Native Americans, Puerto Ricans, and descendants of Mexicans (Chicanos) who settled in the Southwest when the United States annexed Texas, New Mexico, and California after the war against Mexico in 1846-1848, the Native Hawaiians, the Chamorros of Guam, and several other Pacific Island communities were all incorporated into the United States against their will as a result of conquest or colonization. Had a different balance of power prevailed, these groups could have maintained or established their own sovereign governments. Indeed, aspirations for independence occasionally surface in Puerto Rico and among the major Native American tribes. However, historically, these groups, instead of separating from the United States, have sought to achieve autonomy within it.*

At the time of their incorporation, most of these groups acquired a special political status. For example, Native American tribes are recognized as "state-dependent indigenous nations" while enjoying their own government, courts, and the right to enter into treaties; Puerto Rico is a Commonwealth, and Guam is a protectorate. Each of these peoples falls under the political administration of the United States while retaining certain aspects of self-government.

These groups also have language and territorial rights. [...] In short, in the United States, national minorities possess a range of rights designed to reflect or protect their status as distinct cultural communities, and they have fought to maintain and expand these rights.

The Political Strategy of National Minorities

The political strategy of any national minority seeking to preserve the distinctiveness of its culture in a country dominated by a different cultural majority always aims at two essential goals: first, its cultural security, and second, equality or equivalence of its cultural rights and status. Conversely, the majority is generally not concerned with its own cultural security (although it may be concerned about cultural threats emanating from other countries), nor with its own equality, since, in a democracy, it is the majority that controls all democratic institutions and dictates the laws. However, minorities do not benefit from any of these protections unless they

are specifically negotiated and guaranteed by the country's fundamental law. It is important to emphasize the concept of consent, as in any contract. In a multinational state, the constitution is, among other things, a contract between the minority or minorities and the majority, defining the terms that have been negotiated and agreed upon by the various parties in order to establish and build their country's enterprise or adventure together. All parties must then officially approve these terms. We must always remember that the National Assembly of Quebec has never officially ratified the Constitution Act of 1982.

Cultural Security of National Minorities

To feel secure within a broader dominant culture, a national minority needs five guarantees:

(1) formal recognition of its existence as a legitimate national minority within society as a whole, and formal recognition of its legitimate right to its cultural perpetuation within the majority community;
(2) a clear and formal definition, agreed upon by both the minority and the majority, of the characteristics that distinguish the national minority from the majority, which the national minority wishes to preserve and protect from assimilation or homogenization, and which the majority agrees to recognize and respect;
(3) the undeniable right to self-government in the areas that essentially characterize it;
(4) the undeniable right to be represented in the institutions of the majority community; and
(5) the right to veto any proposed constitutional amendments that might be prejudicial to any constitutional protection of the rights it has acquired as a national minority—or, in other words, the binding consent of each party to contractual modifications affecting its rights or status, a clause normally in force in any form of contract.

By definition, if a national minority is to enjoy unquestionable rights to self-government within the national community, there must be some form of agreement regarding the sharing of sovereign power between the supreme government of the country and that of the minority. It is primarily to achieve this kind of sharing of sovereign power that the federal form of government was invented, and **federalism is, by far, the form of government that best respects the rights of national minorities.**

Cultural Security of Francophone Canadians under the British North America Act

To what extent did all parties involved at the time of Canadian Confederation in 1867 understand and endorse the five principles relating to the security of a national minority? We cannot be certain of this.

As is usually the case, it is highly likely that the representatives of the minorities involved in the negotiations that led to Confederation had a clearer understanding of their needs than the representatives of the majority. It seems that **majorities still struggle to understand the needs of minorities.** In any case, the British North America Act of 1867 reflects the five principles in question **very unevenly.**

The first, namely the formal recognition of the existence of the French-speaking minority and its right to cultural perpetuation, is not part of the BNA Act.

The second point, namely the formal definition of the essential distinguishing characteristics that the French-speaking minority wished to preserve, was addressed only in a biased and inadequate manner, in a single article dealing with the question of the French language (section 133). Even section 133 concerned only the use of English and French in the Parliament and courts of Canada, and in the offices of the legislature and courts of Quebec. Thus, from the very beginning of Confederation, the French language was granted no legal status outside the new province of Quebec (formerly Lower Canada), except in the federal Parliament and courts. Implicitly, the legal status of French, except in the federal Parliament and courts, was territorially restricted to a single province, despite the existence of significant Francophone minorities in the three other original provinces: Ontario, New Brunswick, and Nova Scotia. As a result, since 1867, a territorially determined and restricted system of language rights has been in force in Canada, which, moreover, proves to be unequal across the country.

The right to denominational schools for Roman Catholics and Protestants was guaranteed in section 93 of the British North America Act, out of deference to the evident importance that Francophones (and others) placed on the Catholic religion at the time of Confederation. While it is clear that Francophone Catholics expected these denominational guarantees to protect their right to use French as the language of instruction in their denominational schools, this expectation would later prove tragically unrealistic.

Finally, section 94 of the BNA Act stipulated that Parliament could adopt measures to ensure uniformity in all laws relating to property and civil rights in Ontario, Nova Scotia, and New Brunswick, but not in Quebec, given the implicit understanding that in Quebec the legal system governing property and civil rights differed from the common law in force in the other three provinces, and that this difference had to be recognized and respected.

With respect to **the third** principle, namely the indisputable right of Canada’s Francophone national minority to self-government in matters that essentially define it, this principle, clearly enshrined in the BNA Act, applied to all Francophones residing in Quebec, but not elsewhere. This territorial differentiation of Francophone rights was achieved through the simple expedient of reviving an old territorial jurisdiction, the province of Lower Canada, where 80% of the electorate was Francophone, thus creating a firmly established and lasting Francophone majority within that territory; establishing for this province (later named Quebec) a democratically elected autonomous legislature; and assigning to this legislature (and to the three other provincial legislatures simultaneously) exclusive sovereign jurisdiction in all areas considered at the time essential to the cultural perpetuation of Canada's Francophone minority. This establishment of a new permanent government with a Francophone majority within Canada is not explicitly mentioned anywhere in the British North America Act as one of the main objectives to be achieved; however, it is clear that it was indeed one for the Fathers of Confederation.

According to the BNA Act, it is in the division of legislative powers between the central government and the provincial governments that the right to self-government granted to members of Canada's Francophone minority residing in Quebec (and not elsewhere, however) is most clearly recognized. Thanks, to a large extent, to the repeated interventions of Francophone delegates from Quebec at the constitutional conferences, which were led by Cartier, the provinces were granted exclusive jurisdiction over property rights and Civil rights, the administration of justice and procedure in all provincial courts, the celebration of marriages, and, crucially, education, provided, however, that pre-existing religious rights were respected. The Act makes no mention of jurisdiction over language. It may be argued that federal language legislation can override provincial legislation, but, to my knowledge, this issue has never been addressed in court.

Regarding **the fourth** principle, namely the right of the Francophone minority to indisputable representation within the institutions of the majority community, this principle appears in some parts of the BNA Act but not all. This principle of representation was never explicitly stated, but it was respected de facto in the legislative institutions of the central government by the allocation, in 1867, of approximately one-third of the seats in the federal House of Commons and the Senate to members of the new province of Quebec, based on the assumption that the voters and those elected to these seats would be largely Francophone. This assumption has since proven correct, although, due to demographic changes, the proportion of Quebec seats is now only one-quarter in the Commons and the Senate. As for the executive branch, which, in our parliamentary system, is vested in government departments, there is no guarantee of minority representation, although all Canadian departments have had at least a few Francophone Quebecers at their head, and their influence has gradually increased recently. Regarding the federal judiciary, there is no mention of minority representation rights in the Constitution, although in practice three of the nine Supreme Court of Canada justices are always chosen from among the members of the Quebec Bar; in the past, one of these three justices was often non-Francophone.

Finally, concerning **the fifth** principle, namely the mandatory consent of all parties affected by constitutional changes—the so-called right of veto—it must be remembered that the British North America Act contained no amendment procedure since it was an ordinary Act of the Parliament of the United Kingdom, which could therefore be amended at will by that Parliament. In practice, Westminster usually adopted all amendments formally requested by the Parliament of Canada, without requiring further requisitions from the provincial legislatures. This procedure obviously violated the fundamental principle that all affected parties must consent to any change that affects them. But despite numerous attempts, the eleven (federal and provincial) governments of Canada were never able to agree on another amendment procedure before 1981-1982. Quebec had always believed that it had a de facto veto over constitutional amendments that risked restricting its rights or status, if only by constitutional convention or practice. However, in September 1981, the Supreme Court of Canada ruled that Quebec did not have this veto right.

In summary, the five components of cultural security for Francophone minorities in Canada can be formulated as follows:

(1) recognition of their status and their right to perpetuate their culture
(2) the definition of their essential distinctive characteristics
(3) the right to self-government in these essential areas
(4) the right to representation in the central institutions
(5) the right to veto constitutional amendments that are detrimental to their interests

With respect to each of these five components, the BNA Act has shortcomings, and major omissions in the case of the first two.

Cultural Equality or Equivalent Rights and the Status of National Minorities

I would first like to point out that the five components of cultural security I have just discussed can also be considered from the perspective of equality. Officially recognizing a minority culture can indeed be tantamount to recognizing its equal status with that of the majority, or to recognizing the equal value and legitimacy of both cultures. Defining the characteristics that distinguish a minority culture from a majority culture can also simply mean recognizing the different but equally valid and legitimate characteristics of one culture compared to those of the other, which are no more valid or legitimate. Guaranteeing cultural rights autonomy to minorities can also be seen as a way to place their members on an equal footing with those of the majority culture, who already hold full power to govern themselves in all areas. And guaranteeing cultural minorities the right to representation in the main government institutions, as well as the right to veto changes detrimental to their interests, can also be perceived as a means of ensuring that the minority has equal status (in proportion to its population) to the majority in the general administration of the country.

However, while these five components of a minority's cultural security can be considered from the perspective of equality as well as security, there is another, equally important one, which involves **only equality** and not at all security. I mean the system that **recognizes or grants certain cultural rights only on a territorial basis, and restricts those rights to citizens who live in a specific part of the country, as opposed to a system that fully guarantees the equality of minority and majority rights throughout the country.**

It is also worth noting that **the more a minority is aware of being recognized as an equal partner in a country, with rights equivalent to those of the majority, the less it will feel the need to acquire significant powers to govern itself**. These two phenomena can be compared to what Francophones call *des vases communicantes*—a situation where changes in one area directly affect another.

The Unequal Cultural Rights of the Francophone Minority in Canada Outside Quebec

In the case of the Francophone minority in Canada, the imperative cultural right, which demands recognition and respect, is the right to live as much as possible in French.

The right to use any language in private life is, in principle, unrestricted in Canada. But the right to use a specific language in public affairs, particularly as a working language in all government institutions, and as the language of government and public services, including education, is generally governed in all countries by the institutionalization of an official language or languages. Official public languages may be either the subject of legislation or, in the countries that are practically unilingual, simply to be taken for granted. In Canada, two public languages, French and English, have been commonly used since 1760.

Under the legal framework contained in the British North America Act, Francophones in Canada fully enjoyed their linguistic rights only in the province of Quebec, where they controlled the government, which held de facto authority over all cultural matters, and where the primary public language was French. Outside Quebec, however, French had the same status as English only in the federal Parliament and in the courts. Even in Quebec, Francophones had no guarantee of their right to use their own language in their dealings with the federal government; and, in the other provinces, they had no right whatsoever to use French to communicate with the provincial government or to receive its services. Anglophones, on the other hand, fully enjoyed the de facto right to communicate in English with the federal and provincial governments and to receive services from them, since they controlled all these governments except that of Quebec; and in Quebec, given the power of the English minority and its belonging to the dominant culture of Canada, Anglophones controlled their essential institutions and could, until fairly recently, generally deal with the Quebec government in English. The language regime enshrined in the British North America Act was therefore fundamentally unequal—one might even say asymmetrical—since in reality **it restricted the full exercise of the cultural rights of the Francophone minority to a single province, while in fact or in practice it extended the rights of the Anglophone majority to all of Canada.**

It seems clear that the Francophone Fathers of Confederation hoped that this situation would evolve with Canada's territorial and demographic growth. It is important to remember that in 1867, Quebec was one of the four provinces of the initial Union, and that Francophones represented approximately one-third of the population of the new country, of which Montreal was the undisputed metropolis. Furthermore, there was a Roman Catholic Francophone majority in the territory that would soon become Manitoba. Indeed, when Rupert's Land and the Northwest Territories were admitted to the Union in 1870, and Manitoba was formed from part of these new territories and became the fifth province, section 23 of the Manitoba Act stipulated that the use of either French or English would be optional in the proceedings of the Houses and all courts of Manitoba, and that the minutes and laws of the Manitoba legislature were to be printed and published in both languages.

Section 22 of the same Act confirmed for Manitoba the same right to Catholic denominational schools as in the other four provinces; initially, French was freely used as the language of instruction in Manitoba's Catholic schools. By 1867, the large and growing Francophone

minority in Ontario also had the freedom to provide instruction in French in Catholic schools protected by the BNA Act, as did the Acadian minority in New Brunswick.

Unfortunately, the initial dream of a more equitable language regime in Canada was soon to crumble in the face of increasing non-Francophone immigration and anti-Catholic and anti-French prejudice, particularly in Manitoba and Ontario. The tide began to turn as early as 1871, when the New Brunswick legislature abolished Roman Catholic schools and other state-subsidized denominational schools that had existed before Confederation.

For the next seventy years, the cause of equal linguistic rights suffered a series of setbacks across Canada, gradually confronting most French-speaking Canadians with the reality that they would not fully enjoy their linguistic rights anywhere except in the province of Quebec. As a logical consequence of this realization, many French-speaking Quebecers henceforth devoted their energy to strengthening the society and autonomy of the only province whose government they controlled, rather than continuing to defend the increasingly precarious situation of French and Francophones in the other provinces and the nation as a whole.

After the New Brunswick Education Act of 1871, the Louis Riel Rebellions erupted in the West, culminating in Riel's unjust hanging in 1885. It was then that Manitoba effectively abolished Catholic schools and the French-language instruction they provided, as English-speaking, anti-Catholic settlers from Ontario had gradually become the majority in the province and had used their newly acquired control of the Manitoba legislature to achieve this. In 1890, Manitoba decreed that English would henceforth be its sole official language—an obviously illegal law, yet one that remained in effect for 100 years. After 1899, many Francophones opposed Canada's participation in the Boer War in South Africa and, in 1910, they opposed Canadian spending on naval armaments to aid Great Britain.

In 1905, Canada's first Francophone Prime Minister, Wilfrid Laurier, failed in his attempt to secure equal status for French in the newly created provinces of Saskatchewan and Alberta. In 1912, Ontario's infamous Regulation 17 effectively abolished the fundamental right of Francophones to use French as the language of instruction in Ontario schools. A major crisis erupted in 1917, resulting in considerable loss of life, concerning the compulsory conscription of Francophones into the armed forces at the height of the First World War—a crisis that resurfaced during the Second World War in 1942, but was more skillfully managed by Prime Minister Mackenzie King.

Nevertheless, not all Francophones abandoned the original vision of a Canadian partnership between Francophones and Anglophones, entailing equal public rights for English and French speakers across the country. There were some modest victories. Canadian stamps became bilingual in 1931, and coins and banknotes followed suit in 1937, seventy years after Confederation. The Canadian Broadcasting Corporation began broadcasting in French across the country in 1941 and started broadcasting French-language television in the mid-1950s. On a non-linguistic but equally symbolic level, our current maple leaf flag replaced the British-derived Red Ensign to become the flag of Canada in 1965.

The counter-offensive for equal linguistic rights for all Francophones reached its peak during the time of Prime Minister Pierre Trudeau, with the Official Languages Act of 1969, which amended and was enshrined in the Constitution Act of 1982.

However, while this 1982 Act guarantees the right to use either English or French in the federal government and the Government of New Brunswick, it only guarantees the availability of services in both languages in the "principal or central office of an institution of the Parliament or Government of Canada," as well as in any office of the Government of New Brunswick. The other nine provinces still do not have the same guarantees. Regarding the minority's right to choose its language of instruction, the **self-evident principle that, in a country with two official languages, parents and students should have complete freedom of choice between English and French (or freedom to choose both), is so diluted and restricted that it is, in practice, negated.** Despite official denials, it is evident that the failure of Quebec's Bill 101 (the Charter of the French Language) to make English one of Quebec's official languages in 1977 was, to some extent, a response to the repeated refusals of each of the other provinces, except New Brunswick, to grant any official status to the French language. Bill 101, in a sense, returned the favour, abruptly decreeing that French is the (sole) official language of Quebec, despite the unofficial status of equality that English long enjoyed in Quebec. Subsequent Quebec laws have restricted the use of English even more.

Canadians should not underestimate the underlying effect, on Quebec public opinion, of our perpetual refusal to grant full or equal linguistic rights to Francophones outside Quebec. Although this issue is rarely debated in Quebec now, mainly because few, if any, Francophone Quebecers still believe it is feasible, **the impact in Quebec of, for example, a declaration by Ontario recognizing French as an official language would be immense.**

If we intend to persuade moderate Francophone Quebecers to vote for Canada rather than for an independent Quebec in a future referendum, how can we tell them that they are full citizens of Canada, but that they cannot enjoy the same rights as other Canadians throughout the whole country? The message contained in Canada's territorially restricted language rights is perfectly clear to Francophone Canadians: if they expect to live entirely in French, they should stay in Quebec. And in that case, once Quebec feels ready, why shouldn't they prefer to withdraw from Canada completely?

The question of equal status for English and French across the country may be largely symbolic; however, the entire issue of the status of Francophones in Canada is fundamentally one of psychology, symbolism, emotion and perception. As Keith Spicer said, “Quebecers will only stay in Canada if they feel recognized, wanted, and at home.” If Francophones feel rejected, misunderstood, discriminated against and unwanted in Canada, they will understandably want to leave. If they feel welcomed, trusted, and seen as equal partners within the Canadian federation, then they will want to stay. Ultimately, it’s that simple.

ADDENDUM, 2025: Supreme Court of Canada cases on Quebec's veto power

The Supreme Court of Canada's rulings on Quebec's veto power, particularly the 1982 Quebec Veto Reference, have drawn significant criticism, primarily from Quebec nationalist circles and some legal scholars, for undermining the traditional understanding of Canadian federalism and breaking the "bond of trust" upon which Confederation was founded.

Key Rulings and Criticisms

The primary judicial decisions in question are the 1981 Patriation Reference and the 1982 Quebec Veto Reference.

The 1981 Patriation Reference: The Supreme Court ruled that the federal government had the legal power to unilaterally request the UK Parliament to amend the Constitution (to patriate it from Britain), but that a constitutional convention required a "substantial measure" of provincial consent.

The 1982 Quebec Veto Reference: In a subsequent case, the Court specifically ruled that Quebec had no conventional or legal power of veto over constitutional amendments affecting its rights and powers.

Nature of the Criticism

Criticism of these rulings, particularly the 1982 decision, centres on several points:

Ignoring Historical Principles: Critics argue the **Court ignored the fundamental agreement and historical understanding of duality upon which Confederation was based,** which implied Quebec's consent was a requirement for fundamental constitutional change.

Breaking the "Bond of Trust": The ruling, and the subsequent patriation of the Constitution without Quebec's consent (culminating in the Constitution Act, 1982), were seen as a **betrayal that "broke the bond of trust" between French and English Canada.**

Perceived Political Motivation: Some critics suggested the judgment was politically driven to give judicial protection to federal politicians proceeding without Quebec's approval.

Inconsistency in Applying Conventions: The Court was criticized for inconsistently applying the test for identifying constitutional conventions; while it found a convention of substantial consent in 1981, it found no specific convention requiring Quebec's consent in 1982, despite similar historical evidence.

Legitimacy Issues: The outcome led to many in Quebec denying the legitimacy of the patriated Constitution, viewing the court's decision as an affront to Quebec's status as a founding member of the federation.

These decisions remain a sensitive and defining point in Canadian constitutional history, continuing to influence political and legal discussions regarding Quebec's role within the federation.

Explanatory Note: The notwithstanding clause, Section 33 of the Charter

The notwithstanding clause (also known as the "override power") is a provision in the Canadian Charter of Rights and Freedoms (Section 33) that allows Parliament or provincial legislatures to enact laws that operate despite certain Charter rights and freedoms. Its purpose is to provide a mechanism for **elected representatives to have the final say on important matters of public policy** and to act as a balance to the power of unelected judges in interpreting the Charter.

How It Works
Explicit Declaration: A federal, provincial, or territorial government must expressly declare in an Act of Parliament or the legislature that the law will operate "notwithstanding" specific provisions of the Charter. It cannot be implied or used in subordinate legislation (like regulations).

Limited Scope: The clause can only override rights contained in:
Section 2 (fundamental freedoms, including freedom of conscience, religion, expression, assembly, and association).
Sections 7 to 15 (legal rights, such as the right to life, liberty, and security of the person; and equality rights).

Rights Not Subject to Override: It cannot be used to bypass rights related to democratic process (sections 3-5), mobility (section 6), language (sections 16-23), or the equality of men and women provision (section 28).

Five-Year Limit: A declaration invoking the clause automatically expires after five years, or an earlier date if specified. Legislatures can, however, re-enact the declaration, ensuring the issue can be revisited and debated by voters during an election cycle.

Purpose and Controversy
The clause was a political compromise during the patriation of the Canadian Constitution in 1982. Proponents argue it is a democratic backstop that prevents unelected judges from having the final word on complex policy issues. Critics argue it undermines the very purpose of an entrenched Charter by allowing governments to ride roughshod over fundamental minority rights.

Use in Practice

The notwithstanding clause has been used infrequently by the federal government (never) but more often by some provinces, notably Quebec, Saskatchewan, Alberta, and Ontario. Recent uses, particularly pre-emptively (before a court challenge), have reignited public debate about its appropriate application. This question is now pending before the Supreme Court of Canada.